

**IN THE CIRCUIT COURT HELD AT AMASAMAN – ACCRA ON FRIDAY
THE 22ND DAY OF SEPTEMBER, 2023 BEFORE HER HONOUR ENID
MARFUL-SAU, CIRCUIT COURT JUDGE**

CASE NO. D7/125/2023

THE REPUBLIC

VRS.

BENJAMIN LOGAH

ACCUSED: PRESENT

PROSECUTION: C/INSP AWUAH ANSAH PRESENT

COUNSEL: EDEM AMADZOR ESQ. FOR ACCUSED PERSON PRESENT

JUDGMENT

The Accused is charged with one count of Robbery contrary to section 149 of the Criminal and other Offences Act, 1960 (Act 29).

The facts as presented by Prosecution are that on 22nd August, 2022 the complainant, who is a Nigerian went to a friend's birthday party at Exhale Lounge at East Legon and met the Accused. Prosecution says that the Accused proposed to complainant, and she agreed to spend the night with the Accused so the Accused who had a taxi waiting boarded same with the complainant. Upon reaching Pokuase ACP, Prosecution says that the Accused asked the complainant to alight from the taxi and they started to walk to the alleged house of the Accused. According to Prosecution, while walking, the Accused suddenly pulled a knife from his pocket and asked the complainant to surrender her phone and other valuable items she had. Prosecution says that the Accused strip naked the complainant and had sex with her on the floor while the knife was on her throat. Prosecution says that not being satisfied, the Accused asked the complainant to give her the pin to her mobile money and he succeeded in withdrawing an amount of GH¢2,000.00 from the mobile merchant. Prosecution says that the matter was reported at the Amasaman Divisional CID and on the night of 14th December, 2022 the Accused was seen at Osu by other ladies who had fallen victim to him, so he was apprehended and handed over to the Cantonments Police. According to Prosecution, the Accused escaped from

the Cantonments Police Station when he was being interrogated and a search was mounted which resulted in his arrest after which he was handed over to the Amasaman Police. Based upon these facts he was charged and arraigned before this court.

Prosecution called two witnesses in support of its case. PW1 was the complainant Cynthia Ijeoma and PW2 was the Investigator D/C/Inspr. Enoch Agorkpa.

PW1 testified that she is a 27-year-old student in Nigeria on vacation in Ghana. She stated that on 22nd August, 2022 at about 11:30am, she went to a friend's birthday part at East Legon and met the Accused sitting in a taxi. She testified that the Accused asked the taxi driver to call her for him and she informed the taxi driver to ask the Accused to get down from the taxi which he did. She testified that the Accused asked for her phone number and informed her that he was going to the A&C Shopping Mall and that he will be back. She stated that not quite long after the Accused returned in the same taxi and informed her that he had developed love for her so he will like her to join him to go out. According to her, she agreed and asked where they were going, and he mentioned the place to her so she entered the taxi with him and conversed to get to know each other better. She testified that the Accused brought her to Amasaman area which was nice and pointed to a house as the front of his, so he paid the taxi driver and the taxi left. According to her, whilst walking towards the house, upon reaching the back door, the Accused told her not to shout because there are a lot of dogs around the place. She testified that before she realized, the Accused had pulled out a knife and asked her to strip naked. She says she did so, and the Accused forcibly had sex with her once after which he collected her iPhone 12 and asked for the pin number all along with a knife on her throat. She testified that when the Accused finished with everything, he withdrew all the money on the phone, gave her back her clothes and she left. She stated that she went to the roadside and picked a taxi to Pokuase bypass and narrated her story to some people who gave her money to go home. She says she reported the case for police assistance and the Accused was arrested at Osu and sent to Amasaman.

PW2 testified that he is stationed at the Amasaman Divisional CID and that on 30th August, 2022 at 6:40pm, PW1 called at the Divisional CID and made a report. He stated that the Police proceeded to Pokuase ACP and East Legon. He says that on 12th September, 2022 a letter was sent to Exhale Lounge for access to their camera but they failed to allow police access. He

testified that Police obtained MTN mobile money transaction history from MTN. He stated that on 14th December, 2022 information was received from the complainant that the Accused has been arrested at Osu and detained at Cantonments Police Station but he escaped from Police custody when he was being interrogated. He testified that the Police mounted a surveillance for Accused and arrested him and sent him to the Amsaman Police. According to him, his investigation revealed that PW1 was not the only victim of Accused and that on the 14th December, 2022, it was the other victims of the Accused who arrested him and upon hearing the information of his arrest, PW1 also identified Accused as the culprit. He tendered the following documents which were admitted and marked as follows:

- Exhibit A & A1: Charge Sheet and Brief Facts
- Exhibit B: Statement of Cynthia Ijeoma
- Exhibit C: Investigative Cautioned Statement
- Exhibit C1: Charge Cautioned Statement
- Exhibit D: Police Wireless Message
- Exhibit D1: Request for Assistance
- Exhibit E: Mobile Money Transaction History

Prosecution closed its case, and the Accused was called upon to open his defence. Accused testified on oath on 8th September, 2023. He stated that he does not know PW1 and that all allegations levelled against him by PW1 are untrue. According to him, PW1 is intentionally using the law against him and that when this incident happened, PW1 came to the police station and asked the CID to ask him where he gets his wealth from. He testified that he informed him that he works to earn his money and that is all he does so he does not know PW1 from anywhere.

As already mentioned, the charge levelled against the Accused person is Robbery. The **CRIMINAL (AMENDMENT) ACT 2003, (ACT 646)** which amended section 149 of Act 29 states as follows:

“Whoever commits robbery is guilty of an offence and shall be liable upon conviction on trial summarily or on indictment, to imprisonment for a term of not less than ten (10) years, and where the offence is committed by the use of an offensive weapon or offensive missile, the offender shall upon conviction be liable to imprisonment for a term of not less than fifteen years.”

Section 150 of Act 29 which is titled 'Definition of Robbery' states as follows:

"A person who steals a thing commits robbery

(a) If in, and for the purpose of stealing the thing, that person uses force or caused harm to any other person, or

(b) If that person uses threat or criminal assault or harm to any other person,

with intent to prevent or overcome the resistance of the other person to the stealing of the thing."

In his Investigative Cautioned Statement before this court tendered as Exhibit C, the Accused stated that he did not know PW1 until he met her one night at Vienna City in the company of friends. In Exhibit C, Accused denies robbing PW1 and states that he does not know anything about the instant case. In Exhibit C1 which is the Charge Cautioned Statement, the Accused states in part as follows:

"Sometime ago, the same commercial workers attacked me and also took my money. In view of that I also decided to retaliate by doing some to anyone that comes my way. Although I remembered a collected [sic] her phone from her, I never pull knife on her as alleged..."

Clearly, Exhibit C1 constitutes a confession by the Accused of robbing PW1 of her phone. Under Section 120 of the **EVIDENCE ACT, 1975 (NRCD 323)** evidence of a hearsay statement made by an accused admitting a matter which constitutes or forms an essential part of the commission of a crime for which the accused is being tried in the action is not admissible against the accused unless the statement was made voluntarily. The exception under the law to this rule is that if the Accused is arrested, restricted or detained while the Statement is made, then it must be made in the presence of an independent witness who can understand the language spoken by the accused, can read and understand the language in which the statement is made and must be certified by the independent as having been made voluntarily in the presence of the independent witness and that the contents were fully understood by the accused before he signed or made his mark.

In Exhibit C1, I note that the independent witness has certified the document and the Statement was taken in Ewe from the Accused. The Accused did not allege during cross examination that the said Exhibit was

not made out of his own free will. I am thus satisfied that Exhibit C1 meets the requirements of the law.

During cross examination of Accused the following ensued:

Q: You proposed to the complainant on that day

A: I never proposed to complainant, I have ever come across her

Q: You also robbed her of her iPhone and robbed her of GH¢2000 in her phone and also had sex with her

A: I did not rob her of any phone, I don't know her from anywhere, I did not have sex with her."

During cross examination of PW1 by the Accused the following ensued:

Q: You are not being truthful because your narration never happened, I did not meet you, take your number and ask you to join me in a taxi

A: I am being truthful. When he met me at the said lounge after he came back on our way he asked me to join him and I followed him and I asked him where we were going and I haven't been to Amasaman and he stopped along the road and paid the taxi driver and the taxi driver left and when we walked to a place where the environment was ok, there is a street he went to so he asked me that there are dogs so I should let him open the gate and in process of opening gate, he brought out knife and asked me to kneel down and I asked what for, did I do anything wrong and **he said Nigerian girl robbed him before so he is also robbing Nigerian girls...**"
(emphasis mine)

Indeed, this narration by PW1 is consistent with Accused person's admission contained in Exhibit C1 that in retaliation for commercial workers stealing his money he took PW1's phone from her. I therefore consider PW1 to be a credible witness.

In **REPUBLIC v. MAIKANKAN AND OTHERS [1972] 2 GLR 502** it was stated as follows:

"Once it has been proved that a witness has made previous statements to the police, the contents of which are inconsistent with the evidence given in court by the same witness, the effect of the evidence is negligible."

Also, in **YARO AND ANOTHER v. THE REPUBLIC [1979] GLR 10** it was held as follows:

“A previous statement made by a witness to the police which was in distinct conflict with his evidence on oath was always admissible to discredit or contradict him and it would be presumed that the evidence on oath was false unless he gave a satisfactory explanation of the prior inconsistent statement. A witness could not avoid the effect of a prior inconsistent statement by the simple expedient of denial...”

The Accused person on oath has completely denied an involvement in this case and failed to provide an explanation as regards his prior inconsistent statement, his evidence on oath is therefore considered an untruth.

In the case of **STATE v. OTCHERE AND OTHERS [1963] 2 GLR 463** it was held that:

“A confession made by an accused person of the commission of a crime is sufficient to sustain a conviction without any independent proof of the offence having been committed by the accused.”

Based on the entirety of the evidence before me, I find that the explanation given by the Accused on oath that he was not in anyway involved with the case and does not know PW1 is at variance with the evidence on record and therefore such explanation is unacceptable and not reasonably probable. I therefore find the Accused Person guilty, and he is hereby convicted.

(SGD.)
H/H ENID MARFUL-SAU
CIRCUIT JUDGE
AMASAMAN